

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Focussed Remedial Investigation/Feasibility Study for an Inactive Hazardous Waste Disposal Site, Under Article 27, Title 13, and Article 71, Title 27 of the Environmental Conservation Law of the State of New York by

ORDER
ON
CONSENT
INDEX #
W1-0758-95-05

Tishcon Corporation
Respondent.

Site Code #130043E

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is issued pursuant to the Department's authority under ECL Article 27, Title 13 and ECL 3-0301 on consent of Tishcon Corporation.

2. The Department has listed a site in its New York State Registry of Inactive Hazardous Waste Disposal Sites as Site #130043E. That site consists of properties located at 29 New York Avenue, 31-33 Brooklyn Avenue and 30-36 New York Avenue located between Sylvester Street and Brooklyn Avenue midway between Old Country Road and Main Street in the New Cassel Industrial Area in Westbury, New York, Nassau County. The Department has classified this site as a Classification "2" pursuant to ECL 27-1305.4.b.

3. (a) Tishcon Corporation ("Respondent"), currently owns and operates property located at 31-33 Brooklyn Avenue and 30-36 New York Avenue (hereinafter referred to as 30 New York Avenue). Tishcon formerly operated property located at 29 New York Avenue. The Department maintains that past site operations at both of these properties have contaminated groundwater beneath and downgradient of the site with high levels of volatile organic compounds.

(b) The activities to be carried out under this Order are intended to cover activities at property located at 30 New York Avenue and for purposes of this Order only, 30 New York Avenue is referred to as "the Site". A Site map is attached as Exhibit A to this Order.

4. The Department maintains that the site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and presents a significant threat to the public health or environment. The Site has been listed in

the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 130043C. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

5. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL Section 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

6. The Department and Respondent agree that the goals of this Order are for Respondent to (i) implement a Focussed Remedial Investigation/Feasibility Study ("Focussed RI/FS") as set forth in the Department-approved Work Plan attached to this Order as Exhibit B and incorporated into this Order and made an enforceable part of this Order, and (ii) reimburse the State's administrative costs to the extent provided for in this Order with reservation of the Department's rights as to all administrative costs not provided for in this Order.

7. Respondent, having waived it's right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agree not to contest the validity of this Order or its terms.

8. Notwithstanding Respondent's consent to the issuance of this Order and its undertaking of its obligation under this Order, Respondent does not admit or acknowledge any liability, fault or wrongdoing or violation of law, regulation or permit of any kind whatsoever in any way related to the Site.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Initial Submittal

Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within Respondent's possession or control regarding environmental conditions on-Site and off-Site and other information described below, unless the Department advises Respondent that such data have previously been provided to the Department. The data and other information shall include:

A. A brief history and description of the Site, including the types, quantities, physical state, location, and dates of disposal of hazardous waste including methods of disposal and spillage of such wastes;

B. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to all persons responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal and any proof linking each such person responsible with hazardous wastes identified pursuant to Subparagraph I.A; and

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs.

D. Materials already included in the Site Investigation Report prepared by Lawler, Matusky & Skelly Engineers, dated February, 1995, and other materials related to this site that are acknowledged to be in the Department's possession may be incorporated by reference.

II. Performance and Reporting of Focussed Remedial Investigation

A. Within 30 days after the effective date of this Order, Respondent shall commence the Focussed Remedial Investigation in accordance with the Department-approved Focussed Remedial Investigation Work Plan which includes a Work Plan dated November, 1995 prepared by CA Rich Consultants, Inc. and addenda, a letter dated May 8, 1996 from CA Rich to NYSDEC, and a letter dated May 13, 1996 from CA Rich to NYSDEC (collectively referred to hereafter as the Department-approved Focussed Remedial Investigation Work Plan), attached to this Order as Exhibit B and made a part of this Order.

B. Respondent shall perform the Focussed Remedial Investigation in accordance with the Department-approved Focussed RI/FS Work Plan.

C. During the performance of field activities associated with the Focussed Remedial Investigation, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within the time frame set forth in the Focussed RI/FS Work Plan, Respondent shall prepare a Focussed Remedial Investigation Report that shall:

(1) include all data generated and all other information obtained during the Focussed Remedial Investigation:

(2) provide all relevant and appropriate assessments and evaluations set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 U.S.C. 9601 et seq.], as amended, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the Focussed RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.

(3) identify any additional data that must be collected; and

(4) include a certification by the individual or firm with primary responsibility for the day to day performance of the Focussed Remedial Investigation that all activities that comprised the Focussed Remedial Investigation were performed in full accordance with the Department-approved Focussed RI/FS Work Plan.

E. Nothing in this Order shall be construed to limit Respondent's right to file a petition with the Commissioner pursuant to ECL 27-1305.4.b and 6 NYCRR 375-1.9 to delist the site from the Registry or to change its classification.

III. Focussed Feasibility Study

A. Within 30 days after receipt of the Department's approval of the Focussed Remedial Investigation Report, Respondent shall submit a Focussed Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate,

to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site. The Focussed Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order.

B. Respondent shall perform and prepare the Focussed Feasibility Study in accordance with the Department-approved Focussed RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and appropriate USEPA and Department technical and administrative guidance documents.

C. After the Department's approval of the Feasibility Study, Respondent shall cooperate and assist the Department in soliciting public comment on the Focussed RI/FS and on the proposed remedial action plan, in accordance with CERCLA, the NCP, USEPA and Department technical and administrative guidance documents, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the site in a Record of Decision ("ROD").

IV. Interim Remedial Measures

A. (1) Respondent may propose one or more IRMs for the Site.

(2) In proposing each IRM, Respondent shall submit to the Department a work plan that includes a chronological description of the anticipated IRM activities together with a schedule for performance of those activities (an "IRM Letter Report" for that Site).

(3) Upon the Department's determination that the proposal is an appropriate IRM and upon the Department's approval of such work plan, the IRM Letter Report shall be incorporated into and become an enforceable part of this Order; and Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved IRM Letter Report, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375. Respondent shall then carry out such IRM in accordance with

the requirements of the approved IRM Letter Report, detailed documents and specifications, and this Order. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department.

(4) During implementation of all construction activities identified in the Department-approved IRM Work Plan, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

(5) Within the schedule contained in the Department-approved IRM Letter Report, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by that individual that all activities that comprised the IRM were performed in full accordance with the Department-approved IRM Letter Report, detailed documents and specifications, and this Order.

(i) If the performance of the Department-approved IRM encompassed construction activities, the final engineering report shall include a detailed post-remedial operation and maintenance plan ("O & M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification by a professional engineer that the IRM was implemented and all construction activities were completed in accordance with the Department-approved detailed documents and specifications for the IRM. The O & M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

(ii) Upon the Department's approval of the O & M Plan, Respondent shall implement the O & M Plan in accordance with the requirements of the Department-approved O & M Plan.

(6) After receipt of the final engineering report and certification, the Department shall notify Respondent in writing whether the Department is satisfied that the IRM was completed in compliance with the Department-approved IRM Letter Report and design.

V. Progress Reports

Respondent shall submit to the parties identified in Subparagraph XIV.B. in the numbers specified therein copies of written monthly progress reports that: (i) describe the actions which have been taken toward achieving compliance with this Order during the previous month (ii) include all results

of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site; (iv) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

Respondent also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following: substantial completion meeting and inspection and final inspection and meeting.

VI. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 15 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, unless Respondent requests an opportunity to respond to the Department's objections pursuant to the Dispute Resolution Paragraph, *infra*. Respondent shall

be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

VII. Dispute Resolution

A. This Paragraph sets forth the procedures for disputes arising under Subparagraph VIII.B and Paragraph VI.A(2)(b) of this Order.

B. Respondent shall be in violation of this Order and the ECL, if the Department determines that Respondent has failed to comply with requirements of this Order set forth in Subparagraph VIII.B. and Paragraph VI.A(2)(b) unless within 10 days of its failure to comply, Respondent serves on the Department a request for an appointment of an Administrative Law Judge ("ALJ"), and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which Respondent relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position, including supporting documentation no later than ten business (10) days after receipt of Respondent's Statement of Position. Respondent shall have five (5) business days after receipt of the Department's Statement of Position within which to serve upon the Department a reply to the Department's Statement of Position, and in the event Respondent serves such a reply, the Department shall have five (5) business days after receipt of Respondent's reply to the Department's Statement of Position within which to serve upon Respondent the Department's reply to Respondent's reply to the Department's Statement of Position. In the event that the periods for exchange of Statements of Position and replies may cause a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department as agreed to by Respondent.

C. The Department shall maintain an administrative record of any dispute under this Paragraph. The record shall include the Statement of Position of each party served pursuant to the preceding subparagraph, and any relevant information. The record shall be available for review of all

parties and the public.

D. Upon review of the administrative record as developed pursuant to this Paragraph, the ALJ shall issue a final decision and order resolving the dispute. The ALJ's decision and order shall be binding on the Department and the Respondent. Respondent shall revise the submittal in accordance with the ALJ's decision and order. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval of the revised submittal.

E. In review by the ALJ of any dispute pursued under this Paragraph, Respondent shall have the burden of proving that there is no rational basis for the Department's position.

F. The invocation of the procedures stated in this paragraph shall not extend, postpone or modify Respondent's obligations under this Order with respect to any disputed items, unless and until the Department agrees or a court determines otherwise. The invocation of the procedures stated in this Paragraph shall constitute an election of remedies by Respondent, and such election of this remedy shall constitute a waiver of any and all other remedies which may otherwise be available to that party regarding the issue in dispute provided, however, that review of the ALJ's decision may be had in a proceeding pursuant to Article 78 of the CPLR commenced no later than 30 days after the ALJ's decision. The commencement of such a proceeding stated in this paragraph shall not extend, postpone or modify any obligation of the Respondent under this Order, other than those obligations directly subject to judicial review under the Article 78 proceeding.

VIII. Penalties

A. (1) Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

(2) Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Respondent is in violation of the terms of this Order. All penalties begin to accrue on the first day Respondent are in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Respondent receive such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from

the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under Subparagraph VIII.A(2) pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 500
16th through 30th day	\$ 1000
31st day and thereafter	\$ 1500

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of an act of God, war, or riot, or because of any condition or event beyond the control of Respondent or its agent or agents carrying out Respondent's obligations under this Order. Respondent shall, within five days of when they obtain knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to Subparagraph VIII.B. Respondent shall submit the issue for Dispute Resolution under Paragraph VII. if the Department rejects Respondent's assertion that an event is a force majeure event.

Increased costs or expenses of any work to be performed under this order, the financial inability of Respondent to perform such work, the failure of Respondent to make complete and timely application for any required approval or permit, and nonattainment of the goals, standards and requirements of this Order do not constitute conditions or events warranting the relief set forth in Subparagraph VIII.B.

IX. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing

and to ensure Respondent's compliance with this Order.

X. Payment of State Costs

A. Within 30 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses incurred from the effective date of this Order, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Respondent's obligation to reimburse the Department for expenses under this Paragraph shall not exceed \$35,000 per year. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by reports of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (supplies, materials, travel, contractual) and shall be documented by expenditure reports. The first itemized invoice shall cover the above-described State expenses for work related to the Site for the twelve-month period commencing upon the effective date of this Order. Subsequent invoices shall cover the above-described State expenses for work related to the Site that was undertaken after such twelve month period and during the period to which the invoice relates. Respondent can object to any portion of the costs as being inconsistent with this Order and any such disagreement shall be subject to the dispute resolution procedures set forth in Subparagraph X.B.

B. If the Respondent disapproves an invoice, Respondent shall within 10 days of receipt of the Department's invoice, request to meet with the Director of the Division of Hazardous Waste Remediation ("the Director") in order to discuss the Respondent's objections. At this meeting, Respondent shall be given an opportunity to present its objections to the Department's invoices, and the Director shall have the authority to modify and/or withdraw such invoices. The Respondent shall pay the invoice in accordance with the Director's specific comments, as modified, except for those

invoices which have been withdrawn by the Director, and the Department shall submit a revised invoice. After receipt of the revised invoice, the Respondent shall notify the Department in writing of the revised invoice. If Respondent fails to pay the revised invoice, Respondent shall be in violation of this Order and the ECL.

The invocation of formal dispute resolution procedures under this Paragraph shall not of itself extend, postpone or affect in any way any of Respondent's obligations under this Order, except that payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute pursuant to this Paragraph. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Order.

XI. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;
2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fail to satisfy any of the terms of this Order;
3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances or constituents at or from the Site or areas in the vicinity of the Site;
4. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;
5. the Department's right to bring any criminal action against the Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

6. the Department's right to require Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns to develop and implement IRMs for the Site;

7. the Department's right to gather information and enter and inspect property and premises;

8. the Department's right to address groundwater plumes migrating off site resulting from the disposal of hazardous waste at the Site;

9. the Department's right to bring any action or proceeding to recover expenses incurred to the effective date of this Order by the State that are related to the disposal of hazardous wastes at the Site and are appropriate and reasonable and not inconsistent with the NCP; and

10. the Department's right to bring any action or proceeding to recover expenses that are appropriate and reasonable and not inconsistent with the NCP including but not limited to nor exemplified by those related to groundwater contamination on-Site or off-Site.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns.

However, Respondent shall not be required to indemnify the Department, the State of New York, and their representatives and employees regarding any liability arising as a result of the gross negligence or reckless, wanton or intentional misconduct by the Department, the State of New York, and their representatives and employees during the course of any activities conducted pursuant to this Order.

XIII. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Nassau County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent propose to convey the whole or any part of Respondent' ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XIV. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

Communication from Respondent shall be sent to:

Jeanna E. Hussey, Esq.
Division of Environmental Enforcement
Eastern Field Unit
New York State Department of Environmental
Conservation
200 White Plains Road, 5th Floor
Tarrytown, NY 10591-5805

with copies sent to:

1. Chittibabu Vasudevan, P.E.
Division of Hazardous Waste Remediation
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233-7010
2. G. Anders Carlson, Ph.D.
Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

B. Copies of work plans and reports shall be submitted as follows:

1. Four copies (one unbound) to:
Chittibabu Vasudevan, Ph.D., P.E.
Division of Hazardous Waste Remediation
2. Two copies to:
G. Anders Carlson, Ph.D.

Director, Bureau of
Environmental Exposure Investigation.

3. One copy to:
Jeanna E. Hussey, Esq.
Division of Environmental Enforcement
Eastern Field Unit
New York State Department of Environmental
Conservation
200 White Plains Road, 5th Floor
Tarrytown, NY 10591-5805

C. Communication to be made from the Department to the Respondents shall be sent to:

Andrew J. Simons, Esq.
Farrell, Fritz, Caemmerer,
Barnosky & Armentano, P.C.
EAB Plaza, West Tower, 14th Floor
Uniondale, New York 11556-0120

D. The Department and Respondents reserve the right to designate additional or different addressees for communication or written notice to the other.

XV. Miscellaneous

A. All activities and submittals required by this Order shall address on-Site contamination resulting from the disposal of hazardous waste at 30 New York Avenue as set forth in the Department approved Workplan attached as Exhibit B to this Order.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel and data validators acceptable to the Department to perform the technical, engineering and analytical obligations required by this Order. The experience, capabilities and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 15 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained prior to initiation of any activities for which Respondent and such firms or individuals will be responsible.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. The Department shall make available to Respondent and Respondent shall make available to the Department the results of all sampling and/or

tests or other data generated by the Department or Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall use its best efforts to obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Respondent's obligations under this Order. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration. If any access required to perform this Order is not obtained despite best efforts within 45 days of the effective date of this Order, or within 45 days of the date the Department notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. The Department may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse the Department, in accordance with the procedures in Paragraph X, for all costs incurred by the Department in obtaining access, including, but not limited to, attorneys fees.

F. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work to be done under this Order in accordance with this Order.

H. All references to "professional engineer" in

this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

I. All references to "days" in this Order are to calendar days unless otherwise specified.

J. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

K. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to: Jeanna E. Hussey and Chittibabu Vasudevan.

L. The effective date of this Order shall be the date attorneys for Respondent receive this Order, signed and as issued by the Commissioner or his designee and as served upon them by certified mail.

DATED: 6/5 , New York
, 1996

Michael D. Zagata
Commissioner
New York State Department
of Environmental Conservation

By: 

